COURT FEE ₹ 2 TWO RUPEES

4322

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Single Bench

SECOND APPEAL No.: - 75 /2006. S.B.

APPELLANT: -
[Plaintiff]

Ganish Kumar,
S/O Sant Kumar Pradhan,
Aged about- 41 Yrs.
By Profession: Rtd. Rly.Employee,
R/O Near Tarbahar Rly. Crossing,
Bilaspur (C.G.)

: V E R S U S:

RESPONDENTS: -
(Deff./ Res.No1.)

1. **Tittra,** Age: - 40 Yrs,
S/O Khursaal,

2. **Sonnarin Bai,** Age: -43 Yrs.
S/O Khursaal,

(Deff./ Res.No3.)

3. **Ramu,** Age: - 45 Yrs.
S/O Ramadhin,

Both Respondent no.: -1 & 02,
Are the R/O Village:-Lavar,
& The Respondent No.3 is R/O
Village:- Dheka,
Tahsil & Disst. Bilaspur, [C.G.]

4. **STATE OF CHHATTISGARH.**
Through, The Collector,
Bilaspur, Distt. Bilaspur (C.G.)

P.R. No. 410/06
Presented by Shri J. M. Rahman
dated 13/02/06

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-: MEMO OF SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE: -

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HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

SECOND APPEAL NO.75 OF 2006

Ganish Kumar

versus

Tittra and others

ORDER

Post for 10-5-2006

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

SECOND APPEAL NO.75 OF 2006

Appellant Plaintiff : Ganish Kumar

versus

Respondents (Defendant/Res.No.1) : Tittra and others

Present : Mr. J.A.Lohani, learned counsel for the appellant.

ORDER
(Passed on 10 -5-2006)

The appellant has preferred this second appeal under Section 100 of the Code of Civil Procedure against the judgment and decree dated 10-1-2006, passed by VIIIth Additional District Judge, Fast Track Court, Bilaspur, in Civil Appeal No.20-A/2005, as the learned lower appellate Court has rejected the appeal preferred by the appellant against the judgment and decree dated 13-2-2004, passed in Civil Suit No.100-A/2000 by Vth Civil Judge Class-I, Bilaspur and confirmed the judgment and decree of the trial Court, dismissing the suit of the plaintiff.

2. The case of the plaintiff is that he purchased the suit land bearing Khasra No.144 area 0.75 acre of Village Dheka from defendants No.1 and 2 for a consideration of Rs.8,300/- by a registered sale-deed dated 31-3-1989,

however, after three years of the transfer, defendant No.3 dispossessed him, claiming that the land in question was purchased by his father Ramadhin. It was alleged that defendant No.3 got his name mutated in the revenue records without the knowledge of the plaintiff and defendants No.1 and 2 illegally, and on this pleading, a suit for declaration of title and possession was filed.

3. Defendants No.1, 2 and 4 did not file any written statement and they were proceeded *ex parte*. Defendant No.3, in his written statement, averred that earlier Smt. Bai, the wife of Khursaal, was the owner of the suit property. She sold the suit property to Ramadhin, the father of defendant No.3, for a consideration of Rs.45/- on 11-1-1957, on the basis of which, mutation proceedings were initiated and mutation No.3 dated 30-10-1965 was entered in the revenue papers, however, the name of his father Ramadhin could not be mutated on the basis of the above mutation entry, nevertheless, Ramadhin continued to be in possession over the suit land as owner since the date of the purchase. After the death of Ramadhin, defendant No. 3 obtained the same in partition amongst his brothers and he is in possession of the suit land. It was further averred that when defendant No.3 came to know that in pursuance of the mutation entry No.3 dated 30-10-1965, the record has not been corrected in the name of his father, he applied for mutation and vide order dated 5-9-1987 passed in Revenue Case No.37/A-6/85-86, the name of defendant No. 3 was entered into revenue records. It was pleaded that since, on the date of alleged registered sale-deed, the vendors of the property were not recorded owners of the suit land, therefore, no title passes to the plaintiff on the basis of the sale-deed dated 31-3-1989.

4. On the basis of the pleadings of the respective parties, issues were framed, and after recording statements of the witnesses, the learned Civil Judge dismissed the suit of the plaintiff by recording a finding *inter alia* that the plaintiff has not been able to prove that he is the owner of the suit land, and in fact, defendant No. 3 is the owner of the suit land, and accordingly it was held that the plaintiff is not entitled for declaration of title and vacant possession of the suit land, however, it was held that the suit was properly valued and it was not barred by law of limitation, and accordingly the suit was dismissed with costs.

5. The appellant preferred an appeal against the judgment and decree of the learned Civil Judge and the same was dismissed by the impugned judgment and decree, confirming the judgment and decree of the trial Court that the sale-deed dated 31-3-1989, executed in favour of the plaintiff, was illegally executed in his favour and the same was void *ab initio*, as the land in question was already sold to Ramadhin, the father of defendant No. 3, on 11-1-1957, and since then Ramadhin, and thereafter defendant No. 3 were in possession of the same as owners, and defendant No.1, Tittra and his sister, defendant No.2, Sonarinbai did not have any title or possession over the suit land and, therefore, any registered sale-deed, executed by them, does not confer any interest or title to the plaintiff.

6. Learned counsel for the appellant submits that the unregistered sale-deed dated 11-1-1957 is a fraudulently obtained document. On the basis of this document, the revenue records were mutated showing Tittra to be dead, while Tittra was still alive. The document in question was jointly recorded in the

name of Smt. Bai and Sugwarabai, but the sale-deed is allegedly executed only by Smt. Bai. This deed was produced for the first time at the time of filing the written statement and the same was never produced before the Tahsildar in the mutation proceedings, the Tahsildar, at the first instance, refused mutation on the basis of the above sale-deed, and this fact was suppressed by defendant No. 3 in his written statement. Defendant No. 3 was claiming title on the basis of the unregistered sale-deed for a consideration below Rs.100/-, however, he was required to prove that the possession of the land in question was transferred under sale and in absence of proof of transfer and possession, the revenue entries and the khasra entries, showing possession of defendant No.3, are of no consequence. On the basis of the above submissions, learned counsel for the appellant contended that following substantial questions of law arise for adjudication of this appeal :-

(1) "Whether the plaintiff – appellant is entitled to have the right, title and possession over the suit property on the strength of the registered sale-deed dated 31-3-1989?

(2) Whether the Courts below were justified in dismissing the suit of the plaintiff by relying upon the unregistered sale-deed dated 11-1-1957?

(3) Whether the Courts below were justified in ignoring that defendant No. 3 had got his name recorded in the revenue records illegally?"

7. Reliance is placed on the judgment in the matter of Krishna Mohan Kul @ Nani Charan Kul and another versus Pratima Maity and others, reported in 2003 SAR (Civil) 760 Supreme Court and argued that where the plaintiff challenges the validity of the deed on the ground of fraud, misrepresentation, normally the burden lies on the plaintiff to prove such fraud,

but where an active, confidential or fiduciary relation exists between the parties, there the burden of proof is on the donee. It is always obligatory for the beneficiary under a document to prove due execution of the document in accordance with law.

8. I have heard learned counsel for the appellant on admission.

9. The dispute for adjudication before the Courts below can be outlined in a narrow compass -- whether the registered sale-deed dated 31-3-1989, executed by defendants No.1 & 2 in favour of the plaintiff with respect to the suit land, conferred any valid title to the plaintiff or not and whether defendants No.1 & 2 had any interest-title or possession over the suit land on 31-3-1989, in the light of the admitted fact that the land in question was mutated in the year 1987 in the name of defendant No.3 on the basis of the unregistered sale-deed effected in the year 1957. It is not in dispute that defendants No.1 & 2, through whom, the plaintiff is claiming title, were not the recorded owners of the suit land in the year 1989, when the deed was executed in favour of the plaintiff, and defendants No.1 & 2 have not contested the claim of defendant No. 3 in the instant suit that he purchased the land in question from Smt. Bai in the year 1957, and in whose name also, the land in question was admittedly recorded in the relevant period, i.e., in the year 1957. The Courts below, after considering the oral and documentary evidence, available on record, have recorded a concurrent finding of fact that on 31-3-1989, defendants No.1 & 2 had no title, interest or possession over the suit land, as the same stood transferred in the name of defendant No.3 and, therefore, the sale-deed, on the basis of which, the suit has been filed, does not confer any right-interest to the

plaintiff. The above finding of the trial Court, which has been subsequently affirmed by the first appellate Court, is a finding of fact on the basis of proper appreciation of evidence available on record and the same does not call for any interference at the stage of second appeal, as no substantial question of law, as proposed hereinabove by the appellant, is made out.

10. So far as the judgment relied upon by learned counsel for the appellant is concerned, it refers to a situation where the challenge is made to the validity of the deed of transfer on the ground of fraud, misrepresentation, on the allegation that an active, confidential or fiduciary relation existed between the parties to the transfer, and in that circumstance, it has been held that it was the duty of the beneficiary under a document to prove due execution of the document in accordance with law and the onus was wrongly placed on the plaintiff to prove the validity of the deed, however, in the instant case, the persons, who are affected by the deed dated 11-1-1957, i.e., defendants No.1 & 2, have not made any challenge to the sale-deed dated 11-1-1957, and in the aforesaid circumstances, the citation relied upon by learned counsel for the appellant is not applicable to the present set of facts.

11. In the result, the instant appeal, being devoid of substance, is liable for dismissal at the motion stage itself and accordingly it is dismissed. In the light of above order, M.(C.)P.No.246/2006, an application for grant of stay, also stands dismissed. There shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge

Gopal